

VOIR DIRE

This sample can be used to tailor your opening address to the jury for a specific trial.

INTRODUCTION TO JURY PANEL

I am **[name of prosecuting attorney]**, an Assistant **[County or District]** Attorney. I, a Regional Attorney for the Texas Department of Family and Protective Services, work for **[name of DA]**, the elected **[County or District]** Attorney for **[name of County]** County.

My office represents the Texas Department of Family and Protective Services (which used to be called the Department of Protective and Regulatory Services) when that agency must remove children from their parents due to abuse and/or neglect. We come to court on behalf of the agency to remove the children and eventually, if efforts to reunify the family are unsuccessful or unreasonable, to seek termination of the parent-child relationship, if it is in the best interest of the children.

Also seated with me is a representative of my client, Child Protective Services of DFPS. Her name is **[name of caseworker or supervisor]** and she is a _____ with Child Protective Services.

The Respondent mother in this case is **[name of mother]**. She is represented by **[name of mother's attorney]**.

The Respondent father in this case is **[name of father]**. He is represented by **[name of father's attorney]**.

The children of Ms. **[name of mother]** and Mr. **[name of father]** the subject of this suit are **[name of child A]** and **[name of child B]**. **[Name of child A]** is **[age of child A]**, **[Name of child B]** is **[age of child B]**. They also have an attorney to represent them. His/Her name is **[name of attorney ad litem]**. Mr/s. **[name of attorney ad litem]**'s job is to advocate for the children **[and their best interests"**, if the attorney *ad litem* is also the guardian *ad litem*].

[If the guardian *ad litem* is a separate person, add the following sentence: "There is also Guardian *ad litem* advocating for the best interest of the children. His/Her name is {name of the guardian ad litem."}]

[If applicable, add the following sentence: "Also present is the Court Appointed Special Advocate {name of CASA worker}. She is a volunteer from the community who also advocates for the best interests of the children."]

BRIEF EXPLANATION OF THE FACTS OF THE CASE

Now I would like to tell you a little bit about the type of case that you will be hearing. These cases are very serious but this is not a hard case. **[Give a brief explanation of the case.]**

[FOR EXAMPLE: The Department first became involved with the **[last name of the family]** family in 200__, regarding their child **[name of child C]**. Ms. **[name of mother]** worked with agencies in this community and the CPS offered services as well but **[name of child C]** was eventually placed in the permanent custody of Mr. **[name of mother]**'s parents.

On **[DOB of child A]**, **[name of child A]** was born. CPS investigated referrals regarding the care he/she was receiving. CPS offered the family services and discovered that other agencies within the community were also involved with the family. CPS did not remove **[name of child A]** based on these early referrals but referrals continued to come in.

On **[DOB of child B]**, **[name of child B]** was born and CPS received new referrals concerning both children. On **[date of removal]**, removed **[name of child A]** and **[name of child B]** from the home because of the risk of imminent danger to the children and filed its petition with the Court.]

[Further explain the judge's signing off on the removal, placement, visitation, services. Court gives stamp of approval to entire process.]

TERMINATION GROUNDS

The Department is now requesting termination of Ms. **[name of mother]**'s and Mr. **[name of father]**'s parental rights.

- How many of you realized or knew before today that the State could terminate someone's parental rights?
- How did you know this?

In order to terminate the parent-child relationship between the biological parents and their children it must be found that they: **[List the grounds alleged in the termination petition.]**

[FOR EXAMPLE:]

1. engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered the physical or emotional well-being of the children;

OR

2. knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

OR

3. were unable to care for the child. For this termination ground the Department must prove three things:
 - a) the parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
 - b) the illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child; AND
 - c) the Department has made reasonable efforts to return the child to the parent.

Under these grounds for termination it must also be determined that termination of the parent-child relationship would be in the best interest of the child. Some things you may consider in determining the best interest of the child are:

- the needs of the child,
- where those needs can best be met,
- danger to the child and where that is more likely to occur,
- parental abilities or lack thereof,
- plans for the child, stability of the home,
- acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one, and
- any excuses for those acts or omissions.

Termination means that the legal ties between a parent and child are severed. It means that a parent will never have access to a child again. In order for children to be adopted the rights of their biological parents must first be terminated.

- Is there anyone here who thinks that because of their own beliefs or philosophies that they could never terminate a parent-child relationship, regardless of the facts?

DESCRIPTION OF VOIR DIRE PROCESS

We are in a process that we call *voir dire*. *Voir dire* basically means to speak the truth. I am not, nor are any of the other attorneys, here to delve into your personal lives, nor do I wish to embarrass you in any way. Rather the purpose here is to end up with a fair and impartial jury. In other words, we are looking for jurors that are well suited for this type of trial. We are trying to find out about things that might keep you from being able to be completely fair and impartial. That does not mean you would not be very well-suited for another type of trial.

An example of this is that I particularly like chocolate ice cream. I do not like strawberry. If I were on a jury, you could tell me all of the wonderful qualities of strawberry and I would still vote for chocolate. I am not wrong in liking chocolate ice cream, but strawberry would not get a fair trial.

In order for us to find a fair and impartial jury, it is important that you be open and honest with us. This is the attorneys' only chance to speak with you directly. I'm going to ask you a lot of questions and I want to emphasize that there are no right or wrong answers to my questions.

This process is important because in this case the lives of a **[personalized this answer to your case by using the ages of the children involved in the case: for example "3 yr. Old and 1 yr. Old"]** are at stake and their future to a certain extent is going to be determined by you. We want to make sure that each of you can be fair and impartial.

Each of us have some likes or dislikes or "pet peeves" based upon the experiences we have had in our lives. My purpose here is not to judge you personally because of any of these likes or dislikes, but rather to make sure that my client's case is heard by an impartial jury.

Please understand that it is not my desire to "get personal" with any of you or invade your privacy. However, in order for me to represent my client and because of the nature of this case I must ask questions which may be quite personal. I will need to know of any personal experiences you may have had that might affect any decision which you may make in this case.

For this reason I will ask many questions to all of you as a panel and some questions by row. If you feel the least bit of discomfort about responding, then you may wait and do so at the end of *voir dire* up at the bench with only the attorneys involved. You may raise your hand immediately after I ask the question and ask to approach the bench, or you can wait until the close of my *voir dire* and ask to approach then.

I may also ask some of you questions individually. Please don't think that I'm picking on you. Sometimes and best way to break the ice and start a discussion is to pose a question directly to an individual.

I also want to make sure that you understand that this is not the time for us attorneys to try to convince you of the merits of our respective positions but rather an opportunity to communicate with each other and to share our thoughts and ideas.

During the trial you will be the exclusive judges of the credibility of the witnesses and of the weight to be given their testimony. You may believe all or none of what a witness says. This is separate and apart from the Judge, who will rule on all matters of law.

The State enjoys a subpoena power to secure witnesses to attend trial and testify; and the respondents enjoy the same subpoena power to bring witnesses before you.

You need not know any law to sit on this jury. It will be given to you in the charge at the close of all the testimony. However, you must follow the law given to you. The judge will instruct you to go back and deliberate. I need a commitment that each of you can deliberate.

BACKGROUND QUESTIONS (MANY OF THESE BACKGROUND QUESTIONS CAN BE ELIMINATED WHEN A JUROR QUESTIONNAIRE IS USED)

- Mr/s. **[name of juror]**, are you employed outside the home? If no, ask about past employment.
- Who is your employer?
- What kind of business is that **[if not obvious from previous answer]**?
- What do you do there? What are your duties?
- How long have you had this particular job?
- What position did you have before your current position?
- How long did you have this/these jobs?
- [Continue by tailoring job-related questions to facts of case (e.g., What kind of dealings do you have with clients, government agencies, or members of the public?)]**
- Tell me about your educational background, where did you go to high school, any college, that sort of thing.
- Other than the education you mentioned, have you previously attended any vocational schools or other schools that teach specialized skills or prepare people for particular jobs? If yes, which ones?

- Do any of you know any of the attorneys, parties or court personnel in this case?
- Do any of you know the following potential witnesses in the case?
- Have any of you ever served on a jury before?
- Civil or Criminal? Was the State of Texas a party? If so, what agency did it involve and what was the case about?
- Without telling me the verdict itself, can you tell me if the jury in that case was able to reach a verdict? Were you in favor of the verdict?
- Has anyone had a negative experience with any DFPS, County District Attorney's Office? Or any other prosecutors?
- Is there anyone who has had some legal training?
- If there anyone who would not want to sit on a jury involving the termination of a parent's right to their child? Would this prevent you from being fair and impartial?
- If there anyone with any physical problems that would prevent them from sitting on the jury, for example, you're about to deliver a baby any day?
- This trial could last 3-4 days, would anyone be seriously disadvantaged personally or professionally by serving on this jury for the next few days?

BURDEN OF PROOF

As I previously indicated, you, the jury, are the sole judges of the credibility of the witnesses. You can believe, all, part or none of what a witness says.

I expect you will hear contradictions and it will be up to you to use your common sense and judgment to resolve any conflicts.

You might have to decide who is telling the truth and who isn't.

It may be a matter of deciding which witness has the best memory or which witness has a greater interest in remembering events the way they would have liked them to have been.

In a termination of parental rights case, the state has the burden of proof, and we must prove our case to you by clear and convincing evidence.

In most civil cases, the burden of proof is by a preponderance of the evidence: if the scale tips ever so slightly in the favor of the petitioner, then the petitioner has introduced enough evidence to win the case.

In a criminal case, the burden of proof is “beyond a reasonable doubt.” The evidence must tip the scale to the point that there are no reasonable doubts in the jurors’ minds as to the truth of what the state was trying to prove.

Clear and convincing evidence is somewhere between preponderance and beyond a reasonable doubt. It is evidence to produce a firm belief in your mind as to the truth of what is sought to be proved.

- Is there anyone here who feels that the Department should be held to a higher burden of proof in order to terminate the relationship between a parent and child?
- Does anyone believe that clear and convincing evidence is not enough? That the state should be required to prove our case beyond a reasonable doubt as in a criminal case? Should parents have to be convicted of a crime before children can be taken away from them?
- Is there anyone here who feels that no matter what the facts or evidence are, they could not under any circumstances terminate a mother’s parental rights? A father’s?
- Is there anyone here who feels that no matter what the facts or evidence is, the State or government has no business interfering with or meddling into the parent-child relationship or family matters of any kind?

TYPES OF EVIDENCE

There are two types of evidence: direct and circumstantial. An example of direct evidence is “I saw a horse in this area.” There is an eye-witness, or there may even be a picture of a horse in this area.

Circumstantial evidence would be: I see hoof prints; I smell a horse; I heard a horse; therefore, there must have been a horse here.

- The law accepts both types of evidence. Can you?

QUESTIONS RELATING TO FOSTER CARE, ADOPTION AND CPS

- Has anyone had any personal experiences with the foster care system? Has anyone ever been a foster child or a foster parent?
- Have any of you been raised by relatives or a person other than your parent?

- Have any of you ever raised a child that was not your own?
- Does anyone have any experience with adoption? Have you ever been adopted or raised an adopted child?
- Have any of you had any contact with the Texas Department of Family and Protective Services or its subdivision Child Protective Services? Were these experiences good or bad?
- Is there anything about the foster care experience, adoption experience, or your dealings with CPS that would make it difficult or impossible for you to sit and listen to evidence in this termination trial and render a fair and impartial verdict?
- Does everyone understand what CPS does?

CPS PROCESS: FROM A REFERRAL TO A MERITS HEARING [EXPLAIN THE PROCESS; MAKE SURE THIS COINCIDES WITH THE PROCESS IN YOUR COUNTY]

A case like this begins when the Department receives a referral that the children may be in danger.

A caseworker from the Department investigates the complaint and decides whether to remove the children from the home because they are in immediate danger.

At a court hearing within 14 days after the children have been removed from the home, a judge decides whether the children should be returned to the parents or placed in the temporary custody of the Department. If the Department gets temporary custody, the children are usually placed in foster care.

The caseworker prepares a plan of service for the family, which identifies the problems in the family, and sets out what the parents need to do to get the children back.

Approximately every four months, the court reviews the case and the children's placement.

Depending on the parents' progress, the children may be returned to the family at some point. However, a case cannot go on forever. The Texas Legislature has now limited the amount of time the Department has to resolve a case. The Department has one year (or the judge may grant one six month extension) in which to make a permanent placement for the child, or the child must be returned home. However, if the Department believes that the children cannot be safely returned to the family, the Department may seek to terminate the parent-child relationship, so the children may be adopted. The case is then set for trial.

That is how we came to be here today.

- After this explanation are there any others who have had contact with the Department, or its subdivision CPS? Good of bad experience?
- Does anyone have any impressions or ideas about Children's Protective Services?
- Has anyone been accused or know of someone who has been accused of child abuse or neglect?
- Have any of you had any experience with neglected or abused children? Either yourself personally or someone that you know? What comes to mind when I say abused or neglected child?

PARENTING ISSUES

- How many people here are parents? Grandparents? Teachers?
- When and under what circumstances do you think it is appropriate/safe to leave children alone?
- Are there any methods of discipline you think are improper?
- Do you think it is possible for a parent to endanger a child by failing to protect that child from the other parent?
- Do you believe it is important for a parent to be able to put his child first, and make the child his first priority?
- Do you believe that it is important for a parent to be able to provide a stable home?
- Do you believe that it is important for a parent to be able to provide a wholesome, healthy environment?
- Does anyone feel that a mother and father do not share equal responsibility for the safety of their children?
- Do each of you believe that history and past conduct can be a good prediction of future conduct?
- What do you think about the believability of children?
- Do you think children are more likely to lie than adults? Counter with – what does the child have to gain?

- Do you think children are more likely to be taught a story than an adult? Counter with – what does the child have to gain?

INSERT ADDITIONAL CASE-SPECIFIC DISCUSSION AND QUESTIONS RELATING TO THE SPECIFIC TERMINATION GROUNDS ALLEGED IN THE PETITION (E.G., ENDANGERMENT, INABILITY TO CARE FOR CHILD-EXAMPLES FOR THESE GROUNDS FOLLOW)

Endangerment Grounds

Earlier I stated that the State has alleged that Ms. **[name of mother]** and Mr. **[name of father]** engaged in conduct that endangered the emotional or physical well-being of their children. ENDANGER MEANS to expose to loss or injury, to jeopardize. It is not necessary that the conduct which creates the endangerment be directed at the child, that the child be present when the conduct occurs, or that the child actually suffer an injury.

- Do any of you believe that I must show that Ms. **[name of mother]** or Mr. **[name of father]** actually hit their child in order to prove endangerment? Do any of you think that I should be required to show actual hitting or an actual injury, that basically the law should be different from what it is?
- How many of you think that a child can be endangered in ways other than actual hitting? Can anyone give me an example? [EXAMPLES: medical neglect, emotional endangerment, kids basic needs not met, abandonment, instability, domestic violence, etc.]

I also stated that the Department has alleged that Ms. **[name of mother]** or Mr. **[name of father]** placed their child with other persons who engaged in conduct that endangered the emotional or physical well-being of this child.

- Do any of you believe that I am required to show that other persons actually hit or injured the children in order to prove endangerment?
- Do any of you think that I should show that Ms. **[name of mother]** or Mr. **[name of father]** had actual knowledge of these persons' conduct?
- The Department has also alleged that Ms. **[name of mother]** or Mr. **[name of father]** knowingly placed the child in conditions or surroundings that endangered the child's physical or emotional well-being. Any thoughts on what conditions or surroundings could endanger a child? [EXAMPLES: crack house, infant left alone]

Inability to Care for a Child

The Department has a duty by law to protect children and intervene, and their actions are watched over by the courts. Under the endangerment grounds the Department only has to prove that the parent endangered the child and that termination is in the best interest of the child.

Under the inability to care for a child ground the Department has a duty to make reasonable efforts to return the child to the parent. Reasonable efforts vary with the individual case; reasonable means that is reasonable under the circumstances.

- Do any of you feel that “reasonable efforts to return a child to the home” in a termination case means that reunification between a parent and child should occur in all cases?
- Does anyone feel that “reasonable efforts to return a child to the home” means every possible resource should be exhausted before termination is sought?
- Do you believe reunification with the parent is a never-ending duty of the Department? Is it ever appropriate for the Department to give up? How long must the Department try? Six months? One year?
- Does anyone feel that the Department should not seek termination if a parent promises to get into services that would help teach to be a better parent? Would your answer change if the parent had been offered a variety of services before many times? Can you agree that there may come a time when the State needs to terminate the parent-child relationship, if that is what is in the best interest of the child?

INSERT ADDITIONAL CASE-SPECIFIC QUESTIONS THAT RELATE TO VARYING ISSUES (E.G., LOW INTELLECTUAL FUNCTIONING, DOMESTIC VIOLENCE, SEXUAL ABUSE, SUBSTANCE ABUSE, CRIMINAL HISTORY, EXPERT TESTIMONY – SAMPLE QUESTIONS FOR THESE ISSUES FOLLOW)

Low Intellectual Functioning

- There will be evidence to show that [mother, father, or both parents] has a mental illness or deficiency. Does anyone work with or know anyone with a mental impairment or emotional illness [if your case involves mental retardation, you may want to be specific and say mental retardation in this section]? Are they able to function in society?

- Does anyone think that this should excuse a parent's behavior? Does anyone think that because a parent may be mentally or emotionally ill or deficient that he or she is not accountable for their actions regarding their child or that he or she is incapable of endangering a child?
- What if there were community resources available to help make up for their deficiencies and the parent refused to cooperate with those agencies? Do you think people with limited capabilities can learn?
- Would you feel sympathy for the parent? Could you put aside your feelings of sympathy and hold the parent accountable for their actions?

Domestic Violence

- Has anyone ever been in a situation where the use of drugs or alcohol led to violence? Have you ever been in a tense situation made worse by drugs or alcohol?
- Does anyone know anyone currently in an abusive relationship? Do you know of anyone who has escaped from an abusive relationship? How did they get out of the relationship? Did they admit the abuse?
- Does being in an abusive relationship excuse a parent's responsibility to protect and care for her/his children?
- Would you feel sympathy for the abused parent? Could you put aside your feelings of sympathy for the parent and hold them accountable for their actions?
- What if the parent went from one violent relationship to the next? Do you think the parent can change? Does therapy make a difference?
- Do you think domestic violence affects the children in the home? How?

Sexual Abuse

- Has anyone had to deal with the issue of sexual abuse yourself or within your own family? Can you tell me about that? Who was accused?
- Would your personal experience affect your ability to participate in a case where the issue of sexual abuse may be presented?

Substance Abuse

- Is there anyone who has had a drug or alcohol problem or knows of someone who has had a drug or alcohol problem?
- Is there anyone who has seen family or close friends suffer because of someone's alcoholism or drug addiction?
- Is there anyone who has seen lives changed by a therapeutic program for drugs or alcohol?
- Do you believe it would be healthy for a child to be raised in a home where illegal drugs are sold, used, taken, or kept?
- Does anyone believe that a person who is intoxicated from alcohol or drugs is not responsible for their actions?

Criminal History

- If a person goes to jail for committing a crime and thereby cannot parent or protect their children while they are in jail, whose fault is it?
- Can a person adequately parent a child if they are frequently arrested for criminal behavior?
- Does anyone have an opinion as to how it might affect a child to know his or her parent was in jail?

Expert Testimony

- Do you believe that good psychologists (or social workers) by education and training, possess insight about family relationships that can be helpful?
- Have any of you ever had to take your child to see a counselor or therapist? What was it for? Was it helpful?
- Would anyone say they have had bad or negative experiences with psychologists/social workers? Please explain.
- Does anyone here have any special knowledge, skill or training in social work or psychology?
- Does anyone have any medical training?

FINAL QUESTIONS

- Do any of you believe that the Department should not seek termination as long as the parent is seeking to maintain a parent-child relationship with his or her child? No matter how long and hard the state has worked with the parent on reunification?
- To what extent do you think that a parent's past behavior is a good indicator of behavior with other children?
- Is there anyone who thinks that a parent's conduct toward one child would not be important in evaluating the parent's likely conduct with other children?
- Can each of you agree that there may come a time when the state needs to terminate the parent-child relationship if that's what's in the best interest of the child?
- Now that you have an idea of what this case is about, is there anything that I have not asked of you which you feel I might need to know about?
- Anyone thinking right now, "Boy, that attorney would not want me to sit on this jury"? If so, let me know now.

**THANK YOU VERY MUCH FOR YOUR ATTENTION,
HONESTY AND CANDOR.**